

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

76-7261

B
P/S

**United States Court of Appeals
For the Second Circuit**

LILLIAN V. CANNON, individually and on behalf of all
other persons similarly situated,

Plaintiffs-Appellants,

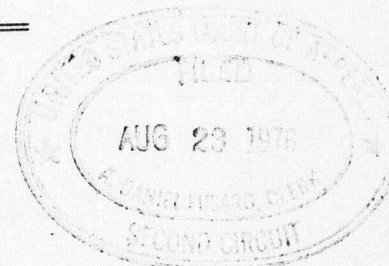
-against-

THE UNITED CHURCH BOARD FOR HOMELAND
MINISTRIES, and REV. OTIS YOUNG, REV. SERGE
HUMMON, REV. HOWARD SPRAGE, and MR.
WILLIAM NELSON, individually and as Officers of
UNITED CHURCH BOARD FOR HOMELAND
MINISTRIES,

Defendants-Appellees.

APPENDIX

EUGENE F. PROSNITZ
Attorney for Plaintiffs-Appellants
50 Church Street
Brooklyn, New York 11201
Telephone (212) 834-8656



PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	<u>Page</u>
Docket Entries	1a
Plaintiff's Complaint in District Court ...	2a
Defendants' Motion to Dismiss.....	9a
Affidavit of Howard E. Spragg in Support .	11a
Exhibit B -- Plaintiff's Complaint with City Commission on Human Rights	16a
Exhibit C -- Determination of City Commission Appeal Board	19a
Exhibit D -- Plaintiff's Complaint with Equal Employment Opportunity Commission	21a
Exhibit E -- Letter from Equal Employ- ment Opportunity Commission Dis- missing Complaint	23a
Exhibit F -- Letter from Equal Employ- ment Opportunity Commission, Notice of Rights	24a
Order and Opinion of District Court, by Gagliardi, J., Dismissing Complaint	25a

DATE	NR.	PROCEEDINGS
10-10-75	1	Filed Complaint and issued Summons.
10-22-75	2	Filed Summons with Marshal's Return. Served: United Church Bd for Homeland Ministries by Secy Nils Forstner, 10/15/75 Rev. Howard Sprague, co/United Church, etc. " " " " " " " Serge Hummon " " " " " " Mr. Wm. Nelson - unex. Rev. Otis Young= "
11-18-75	3	Filed Stip & Order extending time for defts. United Church Bd for Homeland Ministries Rev. Serge Hummon & Rev. Howard E. Spragg to answer summons & complaint to 11/27/75 Gagliardi, J
12-04-75	4	Filed Stip & Order extending time for defts. United Church Bd for Homeland Ministries Rev. Serge Hummon & Rev. Howard E. Spragg to answer summons & complaint to 12/5/75 Gagliardi, J
12-05-75	5	Filed Defts United Church Bd, Rev. Serge Hummon & Howard E. Spragg.
12-05-75	6	Filed Memorandum of law on behalf of defts (same as above) in support of motion to dismiss complaint.
12-05-75	7	Filed Defts. United Church Board for Homeland Ministries, Rev. Serge Hummon & Rev. Howard E. Spragg
01-13-76	8	Filed Affidvt & Notice of motion re: order dismissing complaint as class action ret. 01-20-76.
01-13-76	9	Filed Memorandum of Law on behalf of defts. United Church Bd for Homeland Ministries Rev. Serge Hummon & Rev. Howard E. Spragg in support of motion to dismiss action as class action.
03-22-76	10	Filed Pltff's affidavit & notice of cross motion re: order for class action to be main- tained and permitting pltff to prosecute action on behalf of class ret. 3/18/ or as soon thereafter.
03-22-76	11	Filed Affidvt by Eugene Prosnitz in opposition to motion.
03-22-76	12	Filed Pltff's Memorandum of Law.
03-23-76	13	Filed Memorandum of Defts United Church Bd for Homeland Ministries, Hummon & Spragg, in reply and in opposition to pltff's cross motion to certify action as class action. JUDICIAL CONFERENCE HELD BY Gagliardi & Spragg
03-16-76		
05-05-76	14	Filed OPINION #44350. Pltff's Complaint is also untimely for a further reason as ind- icated. Pltff's complaint was apparently not filed within 90 day period & thus barred by action of statute as well. Deft's motion to dismiss pursuant to Ru- 12b(6) FRCP is thus granted. So Ordered. Gagliardi, J (mm) = 14
05-10-76	15	Filed JUDGMENT. Ordered that defts have judgment against pltff dismissing complaint Clk.
05-26-76	16	Filed Pltff's Appellant Notice of appeal from order of 5/10/76, said order dismissing pltff's individual & class action complaints & from each & every part of said order (copy mailed to Manning, Carey & Redmond on 5/26/76)

B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
WILLIAM V. CANNON, individually and
on behalf of all other persons
similarly situated,

Plaintiffs,

- against -

COMPLAINT

Index No. 75 Civ. 5043

THE UNITED CHURCH BOARD FOR HOMELAND
MINISTRIES, and REV. OTIS YOUNG,
REV. SERGE HUMMON, REV. HOWARD SPRAGE,
and MR. WILLIAM NELSON, individually
and as Officers of UNITED CHURCH BOARD
FOR HOMELAND MINISTRIES,

Defendants.

----- X

PRELIMINARY STATEMENT

1. This is an action for injunctive and declaratory relief, and for money damages, authorized by 42 U.S.C. 2000e, to secure redress for unlawful discriminatory employment practices, engaged in by defendants. Plaintiff seeks reinstatement to employment with back pay, annuity payments, and health insurance payments, along with reasonable attorneys' fees. Plaintiff seeks equal compensation, and equal treatment in regard to the terms and conditions of employment, for herself and for other members of plaintiff class.

JURISDICTION

2. Jurisdiction is conferred on this court by Section

BEST COPY AVAILABLE

706 of the Equal Employment Opportunity Act (28 U.S.C. 2000e).

PARTIES

3. Plaintiff, Lillian V. Cannon, is a member of the black race. She was employed by defendants, as an executive secretary, until said defendants terminated her from employment.

4. Plaintiff resides at 77-79 Columbia Street, New York, New York, located in the Southern District of New York.

5. Defendant United Church Board for Homeland Ministries was plaintiff Cannon's employer, until said plaintiff's termination from employment.

6. Said defendant is, or was, the employer of the other members of the class of plaintiffs.

7. Said defendant has offices located at 287 Park Avenue South, New York, New York, located in the Southern District of New York.

8. Defendants Young, Hummon, Spragg, and Nelson are officers or supervisory personnel of defendant United Church.

CLASS ACTION ALLEGATIONS

9. Plaintiff brings this action, pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, seeking injunctive and declaratory relief for all other plaintiffs similarly situated.

10. The class of plaintiffs includes all those persons who are employed by defendants and who are members of the black race.

11. Plaintiff Cannon's claim is typical of the claim of other members of the class, in that all said plaintiffs were discriminated against,

by defendants, in the terms and conditions of employment, both in terms of compensation, and in terms of unequal working conditions. All said plaintiffs are, or were, employed at the same location, at 287 Park Avenue South, New York, New York.

12. The issues in this case primarily involve common questions of law and fact, common to all plaintiffs. The only significant distinction is that plaintiff Cannon was actually terminated from her job, whereas the other plaintiffs have suffered similar discriminatory treatment in regard to the terms and conditions of employment, but to the best of our knowledge, have not been terminated. Since the controversy at issue involves the question of whether black employees of one employer, at one job location were victims of discriminatory treatment, a class action is the best available means of resolving this controversy, without the necessity of a multiplicity of litigation.

13. Plaintiff knows of no difficulties likely to be encountered in the management of a class action, and knows of no conflicts of interest among the class of plaintiffs.

14. Plaintiff Cannon can fairly and adequately protect the interests of her class. Counsel for plaintiff has been a practising attorney for sixteen years, and has been practising in the federal courts for six years. He has handled several civil rights actions, both while in private practice, and during a four-year period as an attorney with Community Action Legal Services. In addition, counsel for plaintiff served on the legal staff of the New York State Division of Human Rights for four years, and handles numerous discrimination cases at the present time; many of said cases arising out of referrals to counsel from the New York City Bar

Association legal referral panel. Plaintiff Cannon was referred to counsel by said panel.

STATEMENT OF CLAIM

Plaintiff Lillian Cannon, on her own behalf and on behalf of the other plaintiffs similarly situated, alleges as follows:

15. I am the individual plaintiff in this action.

16. I was employed by defendant United Church from August, 1965, until December 31, 1971.

17. Defendants Young, Hummon, Spragg and Nelson were officers and supervisory employees of defendant United Church, and were responsible for the discriminatory policies and practices set forth in this complaint.

18. During the period of my employment, defendants hired primarily white persons, and discriminated against black persons, in their hiring policies and practices.

19. During said period, defendants paid white employees higher salaries than black employees who were performing equivalent jobs.

20. During said period, defendants paid white employees with comparatively little experience the same salary as black employees with much greater experience and ability.

21. During and immediately after the period of my employment, black secretaries were given more onerous assignments than white secretaries. For example, black secretaries were required to work for two men, whereas white secretaries of equal or lesser rank were required to work for only one man.

22. During said period, black employees were offered fewer

promotional opportunities than white employees.

23. The terms and conditions of employment set forth above applied both to myself, and to the other members of the class of plaintiffs.

24. The terms and conditions of employment set forth above constituted discrimination against black employees because of their race.

25. During the latter part of 1971, I frequently complained to defendants in regard to the discriminatory practices set forth above.

26. As a result, I was terminated from my employment on December 31, 1971, by defendants.

27. I was terminated from employment, partly because of my race, and partly in retaliation for the fact that I had complained to defendants regarding their discriminatory practices.

28. The next working day after I was terminated, my job was offered to a part-time white employee who refused it, and was then given to another white employee of only a few months employment with the United Church Board for Homeland Ministries.

29. In January, 1972, I filed a complaint with the New York City Commission on Human Rights, alleging discrimination as set forth above.

30. Said complaint was finally dismissed, on a finding of no probable cause, in October, 1973, after an appeal. (The original finding of no probable cause had been in September, 1972).

31. In January, 1973, I filed a similar complaint with the United States Equal Employment Opportunity Commission.

32. Said complaint was dismissed by the E.E.O.C. by letter dated June, 1975, as being untimely because it commenced more than 300 days after my termination. The E.E.O.C. did not consider the merits of my case.

33. On July 15, 1975, the E.E.O.C. sent me a "Notice of Right to Sue."

34. In my actions before the City Commission and before the E.E.O.C., I was not represented by counsel.

35. I did not file with the E.E.O.C. earlier because I had been informed that the E.E.O.C. would not take a case until after a state or city commission had considered the case.

36. I was not aware until much later that the proper technical procedure was to file first with the E.E.O.C., and to let the E.E.O.C. refer the case to a state or city commission.

37. I have exhausted all my administrative remedies.

38. From December, 1971, to the present, I have been employed only intermittently, and have suffered a considerable loss of earnings, as a result of defendants' discriminatory termination of employment.

39. As a result of the above, I have been compelled to institute the instant court action, for which I have incurred counsel fees.

WHEREFORE, plaintiff respectfully prays that this court enter an order,

a. Declaring that plaintiffs constitute a proper class, and permitting them to litigate this matter as a class action;

b. Granting declaratory and injunctive relief, ordering defendants to afford all members of plaintiff class equal treatment in the terms and conditions of employment, and to rectify any inequalities which the court may find exist at present;

c. Reinstating plaintiff Cannon, and any other members of plaintiff class who may have been terminated because of their race or in

retaliation for asserting their rights, to defendant United Church;

d. Awarding back pay, annuity payments, and health insurance payments to plaintiff Cannon, and to any other members of plaintiff class who may be entitled to back pay, either because of a termination from employment or as compensation for lower salaries said plaintiffs may have received, because of their race;

e. Awarding counsel fees to plaintiff Cannon, and also to plaintiffs' counsel for services performed on behalf of any other members of the class of plaintiffs;

f. Granting plaintiff costs in this action;

g. Granting such other and further relief as to the court may deem just and proper.

Dated: Brooklyn, New York
October 9, 1975

Respectfully submitted,

EUGENE F. PROSNITZ, ESQ.
50 Court Street
Brooklyn, New York 11201
Tel. No.: (212) 834-8656

Attorney for Plaintiffs

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

- - - - -X

LILLIAN V. CANNON, individually and :
on behalf of all other persons :
similarly situated, :
Plaintiff, : 75 Civ. 5043
(L.P.G.)

- against - :

THE UNITED CHURCH BOARD FOR HOMELAND :
MINISTRIES, and REV. OTIS YOUNG, : NOTICE OF MOTION
REV. SERGE HUMMON, REV. HOWARD SPRAGE, :
and MR. WILLIAM NELSON, individually :
and as Officers of UNITED CHURCH :
BOARD FOR HOMELAND MINISTRIES, :

Defendants. :

- - - - -X

S I R:

PLEASE TAKE NOTICE that upon the annexed affidavit of
Howard E. Spragg, sworn to the 2nd day of December, 1975, the
exhibits annexed thereto and the summons and complaint herein,
the undersigned will move this Court before Hon. Lee P. Gagliardi,
United States District Judge, on the 23rd day of December, 1975,
at 4:00 o'clock in the afternoon of that day, or as soon there-
after as counsel can be heard, in Room 618 of the United States
District Courthouse, Foley Square, New York, N. Y., for an order
pursuant to Rule 12 of the Federal Rules of Civil Procedure, dis-
missing the complaint herein as to the defendants, United Church

Board for Homeland Ministries, Rev. Serge Hummon and Rev. Howard E. Spragg, on the ground that this Court lacks jurisdiction of the subject matter of the action, and for such other, further and different relief as to the Court may seem just and proper.

Dated, New York, N. Y.
December 3, 1975.

Yours etc.,

MANNING, CAREY & REDMOND

By

John T. Redmond, member of firm

TO: EUGENE F. PROSNITZ, ESQ., Office & P. O. Address,
Attorney for Plaintiff, 122 East 42nd Street,
Office & P. O. Address, New York, N. Y. 10017
50 Court Street, Tel. #212-867-1040
Brooklyn, N. Y. 11201

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

-----X
LILLIAN V. CANNON, individually and :
on behalf of all other persons :
similarly situated, :

Plaintiff, :

75 Civ. 5043

- against - :

THE UNITED CHURCH BOARD FOR HOMELAND :
MINISTRIES, and REV. OTIS YOUNG, :
REV. SERGE HUMMON, REV. HOWARD SPRAGE, :
and MR. WILLIAM NELSON, individually :
and as Officers of UNITED CHURCH :
BOARD FOR HOMELAND MINISTRIES, :

AFFIDAVIT

Defendants. :

-----X
STATE OF NEW YORK)

SS:

COUNTY OF NEW YORK)

HOWARD E. SPRAGG, being duly sworn, deposes and says:

I am one of the defendants in the above-entitled action
and the Executive Vice-President of the United Church Board for
Homeland Ministries (The Board) a New York Not-for-Profit cor-
poration, which is also a named defendant.

I make this affidavit in support of my motion and that of
the defendants, the Board, and Rev. Serge Hummon, for an order
dismissing the complaint herein.

The Board, a religious and charitable not-for-profit cor-
poration, is the recognized instrumentality for furthering the
Christian mission of the United Church of Christ in the United
States and its possessions. The United Church of Christ is a

religious fellowship or denomination of approximately 6,600 churches and 1,900,000 members. It was formed in 1957 through a union of the Evangelical and Reformed Church and the Congregational Christian Churches, both of which bodies have long and honored traditions in this country.

Among other responsibilities, the Board has carried on the work of a number of historic societies from both the Evangelical and Reformed Church and the Congregational traditions. These societies include The American Missionary Association, which in the years following the civil war founded over 600 schools for freedmen throughout the south. Among those still related to the Board are Dillard University, Tougaloo College and Fisk University, where for several decades the Board has maintained, as part of its ongoing program, the nationally renowned Race Relations Department which was instrumental in providing the research and background material upon which the United States Supreme Court declared, in Brown v. Board of Education, 347 U.S. 483 (1954) that separate was not equal.

The Board has long been pledged to a policy of non-discriminatory practices. Indeed, the edition of the Employee Handbook current during the time of the plaintiff's employment, under the heading, "New Employees", stated the following:-

"All persons considered for clerical employment are selected and appointed to positions on the staff on the basis of ability and fitness, irrespective of race, creed or color."

In this action, which was instituted on or about October 15, 1975, the plaintiff on her own behalf has alleged substantially the same facts and seeks substantially identical relief to that sought by her in a proceeding brought by her against all of the defendants before the New York City Commission on Human Rights on or about January 21, 1972. A copy of the complaint herein is annexed as Exhibit "A" and a copy of the complaint in the proceeding before the New York City Commission on Human Rights is annexed hereto as Exhibit "B".

Following an exhaustive investigation by the New York City Commission on Human Rights, that body, on September 29, 1972, dismissed the plaintiff's complaint on the ground that probable

cause did not exist for crediting the allegations of the complaint charging the Board and the other respondents with unlawful discriminatory practices in violation of the Administrative Code of the City of New York. Thereafter, the plaintiff sought a review of the determination of the Commission in accordance with the statutory procedure. On October 2, 1973, after review, the Commission, by Eleanor Holmes Norton, its

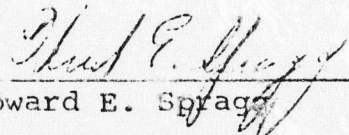
chairman, issued its determination and order, which affirmed the Commission's determination dismissing the complaint. A copy of said determination and order is annexed hereto as Exhibit "C". No judicial review of the determination of the Commission on Human Rights has been sought by the plaintiff and the time therefor has long since expired.

During the pendency of the proceedings before the New York City Commission on Human Rights, the plaintiff, on January 3, 1973, filed a complaint with the Equal Employment Opportunity Commission (EEOC) in which she repeated the charges contained in the complaint filed by her with the New York City Commission on Human Rights and, insofar as they relate to plaintiff's individual claim, are embodied in the complaint presently before this court. A copy of the charge filed with the EEOC is annexed hereto as Exhibit "D". On June 23, 1975, the District Director of the EEOC, by letter, a copy of which is annexed as Exhibit "E", advised the plaintiff that her charge had been dismissed because of the lack of timely filing. Thereafter, the Board received a copy of a Notice of Right to Sue, dated July 15, 1975, which had been directed to the plaintiff by the EEOC. A copy of the Notice of Right to Sue is annexed hereto as Exhibit "F".

I am informed and believe that the dismissal of the plaintiff's charge by the EEOC on the ground of lack of jurisdiction and untimely filing precludes further consideration of


the matter by this Court and, further, that the prior determination of the New York City Commission on Human Rights in connection with substantially the same charges, at least as they relate to the plaintiff's individual claim, precludes further consideration by this Court. In addition, I am informed that valid legal arguments supporting the dismissal of the class claims contained in the complaint will be presented to this Court in a Memorandum of Law filed with this affidavit.

WHEREFORE, deponent respectfully requests that this Court make an order dismissing the complaint herein, and for such other and further relief as may seem proper to this Court.


Howard E. Spragg

Sworn to before me this

11 day of December, 1975.


Notary Public

DOROTHY W. BROWN
Notary Public, State of New York
No. 41967705, Exp. Date in Queens Co.
Cert. filed in New York County
Commission Expires March 30, 1977

Commission on Human Rights
or the complaint of

Lillian V. Cannon

Complainant

Complaint No. 5440-J

against

United Church/Board for Homeland
Ministries, Rev. Otis Young,
Rev. Hummon, Rev. Howard Spragg,
and Mr. William Nelson

Respondent

I, Lillian V. Cannon
residing at 77-79 Columbia Street, Apt. #20A, New York, N.Y. 10007
charge the above respondents
whose address is 287 Park Avenue South, New York, New York 10010
with an unlawful discriminatory practice relating to employment
at the above address
on or about December 31, 1971
by terminating me and denying me proper salary
because of my RACE (XX), COLOR (XX), CREED (), NATIONAL ORIGIN (),
PHYSICAL HANDICAP (), AGE (), SEX ().

The particulars are: (1) On or about July 1965 I was hired as Executive Secretary for the United Church/Board for Homeland Ministries, 287 Park Avenue South, New York.

(2) During my first three and one-half years of service under Dr. Furd E. Deitz, General Secretary Division of Church Extension, my work was considered excellent. In fact, I received several letters from him highly commending my work. For the final three years, serving under Reverend Otis Young, General Secretary, Division of Church Extension, I was never led to believe that my work was unsatisfactory. I actually overheard statements to the effect that my work was most satisfactory and creative.

(3) During my employ with the United Church, I discovered that a white secretary with less experience and less

time with the organization than I, was making equal pay for less work on her part.

(4) Also, right now in the company, to my best knowledge, there is one Black executive secretary who has worked there eight years. In July of this year she was forced to work for two men at no increase in salary. In April 1971, a white secretary, not an executive secretary, was employed to work for two men in my division at a salary of \$145.00 per week. There are to my best knowledge at least two more Black secretaries doing the same work as white secretaries who earn less than the whites. To my best knowledge the Black women have equal to or better than the work experience of the white women hired.

(5) On December 17, 1971 I was told by Nils Forstner, Assistant to Howard Spragg, that my job was no longer needed because my boss, Otis Young, was leaving. However, my former boss, Reverend Young, was immediately replaced by Reverend Serge Hummon on an interim basis. Furthermore, Reverend Hummon and William Nelson have since filled my post (which they had told me would be unnecessary) with a temporary employee for an indefinite period of time. (Before hiring the temporary, the very next working day after I was dismissed however, they asked a woman who worked part time to take my position full time.)

(6) I have reason to believe that I was terminated because I have brought to the attention of Otis Young on several occasions the discriminatory salaries paid to Black secretaries who have equal to or better work experience than white secretaries presently there, and which Black secretaries have been working for the United Church/Board for Homeland Ministries years longer than the white secretaries.

(7) I am Black. I charge that the respondents have discriminated against me in violation of the Administrative Code of the City of New York, and that as a result of respondents' unlawful discriminatory practices, I have suffered expense, loss of earnings, humiliation, outrage and mental anguish for which I claim compensatory damages.

I have not commenced any action, civil, criminal or administrative based on the above allegation other than the following:

CITY OF NEW YORK)

COUNTY OF

ss.: New York

Lillian V. Cannon
(Signature of Complainant)

Lillian V. Cannon....., being duly sworn, deposes and says:
that she is the Complainant herein; that she has read the foregoing
complaint and knows the contents thereof; that the same is true of her
own knowledge, except as to the matters therein stated on information and belief
and that as to these matters she believes the same to be true.

Subscribed and sworn to before me

the 21st day of January, 1972

Lillian V. Cannon
(Signature of Complainant)

-29 (2 of 2)

Francis R. Smith
FRANCIS R. SMITH
Notary Public, State of New York
County of New York
Commission Expires March 30, 1973

- 0790

DETERMINATION ON AN ORDER AFTER HEARING

THE CITY OF NEW YORK
COMMISSION ON HUMAN RIGHTS

- - - - - x

Lillian Cannon,

:

- v -

:

United Church Board for Homeland
Ministries,

:

:

Case No. 5440-J

- - - - - x

On October 9, 1972 the above-named complainant (s) filed a request for review of the action of the Commission on Human Rights dated September 29, 1972 determining that probable cause does not exist for crediting the allegations of the complaint charging the above-named respondent (s) with an unlawful discriminatory practice in violation of the Administrative Code of the City of New York.

Upon such review and after due consideration I find that there is no probable cause to believe that the respondent has (has) engaged or is (is) engaging in the unlawful discriminatory practice complained of.

Upon the foregoing, it is ordered that the Commission's determination dated September 29, 1972 be affirmed.

CITY COMMISSION HUMAN RIGHTS

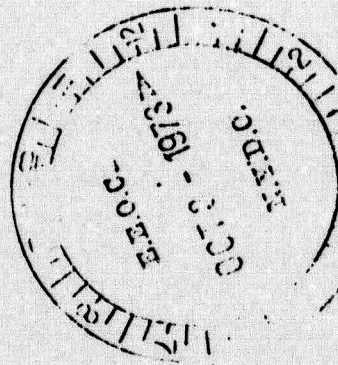
Dated: October 2, 1973

BY:

Eleanor Holmes Norton
Eleanor Holmes Norton
Chairman

TO: Manning, Carey,
P. Board & Tully
122 East 42nd Street
New York, New York 10017

Ms. Lillian Cannon
77-79 Columbia Street
New York, New York 10017



CHARGE OF DISCRIMINATION

If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's Regional Office in your area. In most cases, a charge must be filed with the EEOC within a specified time after the discriminatory act took place. IT IS BEFORE IMPORTANT TO FILE YOUR CHARGE AS SOON AS POSSIBLE.

This form is to be used only to file a charge of discrimination based on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN.

Case File No. 100-7-3046

(PLEASE PRINT OR TYPE)

Your Name (Mr, Mrs, Miss) Lillian V. Cannon

Phone Number 475-5777

Street Address 77-79 Columbia Street
City New York State N.Y.

Zip Code 10002

AS THE DISCRIMINATION BECAUSE OF: (Please check one)

Race or Color ☒ Religious Creed ☐ National Origin ☐ Sex ☐ (Black)

Who discriminated against you? Give the name and address of the employer, labor organization, employment agency and/or apprenticeship committee. If more than one, list all.

Name United Church/Board for Homeland Ministries

Street address 287 Park Avenue South

City New York State N.Y.

Zip Code 10002

Other parties (if any)

Have you filed this charge with a state or local government agency?

Yes ☒

When January 7, 1972

No ☐

If your charge is against a company or a union, how many employees or members?

Under 25 ☐

Over 25 ☐

The most recent date on which this discrimination took place: Month December Day 31, Year 1971

BEST COPY AVAILABLE

Explain what unfair thing was done to you. How are other persons treated differently? (Use extra sheet if necessary.)

I was discriminated against because of my race (Black) in being denied equal terms and conditions of employment, in not receiving a salary commensurate with my experience and seniority at UCBUM in violation of their "employee handbook" requirements, and in being discharged from my position as executive secretary in the Division of Church Extension without being given any warning. In addition, Black secretaries are paid less than their white counterparts and are required to work for two men whereas white secretaries work for only one man.

I swear or affirm that I have read the above charges and that it is true to the best of my knowledge, information and belief.

Ats. January 3, 1973

(Sign your name)

day of

1973

(Print name)

(Print name)

do not sign this charge unless you are sure you can read and understand it to the Region 4 Office. The Commission will help you if you need it.

At Ats. 1000 G. 1000 G. 1000 G. 1000 G.

FORM 1200-5 (REV. 7-69)

June 23, 1975

Ms. Lillian Cannon
77-79 Columbia Street
New York, New York

Re: Cannon v. United Church/
Board for Homeland Minis-
tries
TNY 3-0795

Dear Ms. Cannon:

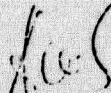
This is in further reference to the complaint of employment discrimination in violation of Title VII of the Civil Rights Act of 1954, as amended, filed by you.

This office has concluded that this Commission has no jurisdiction and your complaint has been dismissed for the following reason:

The unlawful practice alleged in your complaint of discrimination occurred in a State which has an agency to which this Commission defers prior to taking action on a charge. Title VII requires that such a complaint of discrimination be filed within 300 days of the alleged discriminatory act. Your complaint was not filed within that period.

If you object to this office's dismissal of your charge, you may contest your objection in the U.S. District Court. If you wish to follow this course, please use the enclosed envelope to send us a letter requesting a "Notice of Right-to-Sue" in your case, and explaining why you believe we have jurisdiction over your complaint.

Sincerely,



Arthur L. Felt
Principal Director

EEOC EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE

JUL 15 1975

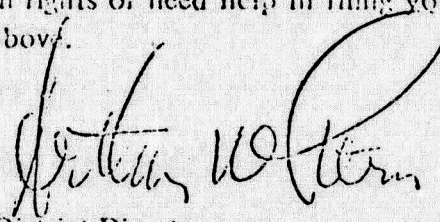
TO:		FROM:	
Ms. Lillian V. Cannon 77-79 Columbia Street New York, New York 10002		Equal Employment Opportunity Comm. New York District Office 90 Church Street, Room 1301 New York, New York 10007	
THIS CHARGE HAS BEEN DISMISSED FOR THE FOLLOWING REASON:		EEOC REPRESENTATIVE	
<input type="checkbox"/> NO REASONABLE CAUSE <input checked="" type="checkbox"/> UNTIMELY CHARGE <input checked="" type="checkbox"/> NO JURISDICTION <input type="checkbox"/> FAILURE TO PROCEED		Ralph Munoz, District Counsel	
		TELEPHONE NUMBER	CASE/CHARGE NUMBER
		264-7161	NY 3-0790

If you want to pursue your charge further, you have the right to sue the respondent(s) named in this case in the United States District Court for the area where you live. If you decide to sue, you must do so within ninety (90) days from the receipt of this Notice; otherwise your right is lost.

If you do not have a lawyer or are unable to obtain the services of a lawyer, take this Notice to the United States District Court which may, in its discretion, appoint a lawyer to represent you.

An information copy of this Notice has been sent to the respondent(s) named in this case.

If you have any questions about your legal rights or need help in filing your case in court, call the EEOC representative named above.



District Director

cc:
President
United Church Board for Homeland Ministries
287 Park Avenue South
New York, New York 10002

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
LILLIAN V. CANNON, individually and on
behalf of all other persons similarly
situated,

Plaintiff,

-against-

UNITED CHURCH BOARD FOR HOMELAND
MINISTRIES, REV. OTIS YOUNG, REV.
SERGE HUMMON, REV. HOWARD SPRAGUE,
MR. WILLIAM NELSON, individually and
as officers of United Church Board
for Homeland Ministries,

Defendants.

-----x

75 Civ. 5043

MEMORANDUM
DECISION

GAGLIARDI, D. J.

In this case, plaintiff Lillian Cannon brings suit against her former employer, the United Church Board for Homeland Ministries, (the "Church"), and several of its officers for violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. She alleges that her dismissal as an executive secretary on December 31, 1971 resulted from the Church's racially discriminatory employment practices, and seeks to represent the class of black employees of the Church allegedly the victims of employment discrimination. The defendants here move to dismiss the complaint on the ground that plaintiff's claim is barred by the statute of limitations. Defendants' motion is granted.

The plaintiff filed her discrimination charges with the New York City Commission on Human Rights in January 1972. On September 29, 1972, the Commission found there was no probable cause to believe that the Church had engaged in unlawful discrimination practices, and that decision was reaffirmed on administrative appeal on October 2, 1973. On January 3, 1973 she filed a charge with the Equal Employment Opportunity Commission (EEOC) under Title VII. On June 23, 1975 she was notified by letter that her charge was dismissed for failure to comply with the statutory requirement of 42 U.S.C. §2000e-5(e) that a charge initially filed with a state or local agency be filed with the Commission within 300 days after the alleged unlawful employment practice occurred. On July 15, 1975 she received a right to sue letter, and on October 9, 1975 the present suit was filed.

The plaintiff concedes that her complaint was filed 369 days after she was discharged by the Church on December 31, 1971. 42 U.S.C. §2000e-5(e) provides:

(e) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on

behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency. (emphasis added)

Despite this explicit statutory language, the plaintiff here contends (1) that where there are extenuating circumstances this court has the equitable power to excuse the failure to file within the 300-day statutory period, (2) the plaintiff's filing with the New York City Commission on Human Rights effectively tolls the statute with respect to filing before the EEOC, and (3) the acts alleged in the complaint constitute continuing violations of Title VII by the defendants, rendering the statutory period of limitation on suit inapplicable. None of these theories can save the plaintiff's complaint under the circumstances of this case.

It is clear that compliance with the statutory time limits for filing charges or complaints under the Civil Rights Act of 1964 are jurisdictional prerequisites to suit. DeMatteis v. Eastman Kodak, Co., 511 F.2d 306 (2d Cir. 1975) mod. on rehearing 520 F.2d 409; Olson v. Rembrandt Printing Co., 511 F.2d 1228 (8th Cir. 1975); Moore v. Sunbeam Corporation, 459 F.2d 811, 821 n.26 (7th Cir. 1973). Although there are cases in which courts have liberally construed these requirements to prevent innocent

claimants from being denied their day in court, Gates v. Georgia-Pacific Corporation, 492 F.2d 292 (9th Cir. 1975); Franks v. Bowman Transportation Company, 495 F.2d 398 (5th Cir. 1974, 44 U.S.L.W. 4356 (March 23, 1976)), no case cited by plaintiff has ever held that a court has the equitable power to excuse a clear failure to file a charge with the EEOC within the statutorily prescribed period because the plaintiff is unrepresented by counsel or otherwise unaware of the statutory requirements.

Similarly, it appears clear from the statute that filing a complaint with a local agency such as the New York City Human Rights Commission does not indefinitely toll the period within which a charge must be filed with the EEOC. Plaintiff contends that here if her complaint had been filed with the EEOC, the EEOC as a matter of practice would not in fact have processed it until the state proceedings were concluded; thus requiring her to file her charge with the EEOC would have been a meaningless gesture. She argues that this case should be analogized to cases in which a party initially elects to pursue a discrimination claim in a private labor arbitration proceeding. In such cases, several courts have held that the statutory period for filing charges with the EEOC is tolled pending the arbitration. Sanchez v. Trans World Airlines, 499 F.2d 1107 (10th Cir. 1974); Malone v. North American Rockwell Corporation, 457 F.2d 779 (9th Cir. 1972); Culpepper v. Reynolds Metals Co., 421 F.2d 888 (5th Cir. 1970). In the situation here, however, there was no

private arbitration, but rather a claim with a local discrimination agency. The statute explicitly states that in such cases the period of limitations for filing with the EEOC is extended from 180 days to 300 days. To find that filing with a local agency tolls the statute indefinitely would be to ignore the clear language of the statute.

Finally, plaintiff's claim that the Church's failure to rehire her is a continuing violation of the statute must also be rejected. In this case, the plaintiff's employment by the Church was terminated on December 31, 1971. Her complaint attacks basically that termination of employment and events occurring while she was employed by the Church. While the theory of continuing discrimination is clearly available to present employees, Marlowe v. Fisher Body, 489 F.2d 1057 (6th Cir. 1973); Laffey v. Northwest Airlines, Inc., 366 F. Supp. 763 (D.D.C. 1973), and has even been held to apply to retired employees who were discriminated against by a company-wide retirement policy, Bartmess v. Dewrys U.S.A., Inc., 444 F.2d 1186, 1188 (7th Cir.), cert. denied 404 U.S. 939 (1971), it generally has not been applied to employees who were terminated through discharge or resignation. Olson v. Rembrandt Printing Co., 511 F.2d 1228, 1234 (8th Cir. 1975). The plaintiff here claims that since the suit has been brought as a class action, which alleges that her termination was merely one act in a continuing pattern of discrimination by the Church, this general rule

is inapplicable to this case. Although there is some authority which tends to support plaintiff's position in this respect, cf. Macklin v. Spector Freight Systems, Inc., 478 F.2d 979 (D.C. Cir. 1973); Kohn v. Royal, Koegel & Wells, 59 F.R.D. 515 (S.D.N.Y. 1973), appeal dismissed 496 F.2d 1094 (involving refusals to hire), American Finance System Incorporated v. Harlow, 65 F.R.D. 94, 103 (D. Md. 1974) (Equal Pay Act claim), this court believes that these authorities are distinguishable from the situation here. In those cases the plaintiff's complaint clearly attacked a wide pattern of discrimination affecting a large class of which the individual act was one example. The courts thus held that where the individual grievance was merely a springboard from which to investigate the employer's alleged discriminatory practices with respect to the class as a whole, the complaint would not be barred by the statute of limitation even though the named plaintiff's grievance might be untimely if it were a single isolated act.

In this case, on the other hand, the plaintiff appears basically to complain about her individual dismissal. Although the complaint contains conclusory allegations about a general practice of race discrimination by the church and purports to seek representation of the class, nowhere in the complaint are there set forth any specific allegations about instances of discrimination affecting black employees of the Church other than the plaintiff. Furthermore, there is

serious question as to whether this case would even satisfy the requirements of Rule 23, Fed. R. Civ. P. for a class action.¹ Under these circumstances, this court does not believe there is a sufficient allegation in the complaint of a continuing statutory violation with respect to this plaintiff. Cf. Olson v. Rembrandt Printing Co., supra at 1234. To permit any plaintiff who has been dismissed from a job by an employer to avoid the statutory period of limitations by the mere allegation of a class action and continuing violation of the statute would render any limitation of the period meaningless.

Plaintiff's complaint is also untimely for a further reason. The EEOC notified her of the dismissal of her charge on June 23, 1975. This suit was not filed until October 9, 1975. In DeMatteis v. Eastman Kodak, Co., supra the Second Circuit Court of Appeals held that under 42 U.S.C. §2000e-5(f) all complaints in a civil rights action after May 8, 1975 must be filed within 90 days of initial notification of an adverse decision by the EEOC. Plaintiff's complaint here was apparently not filed within the 90 day period, and thus is barred by that section of the statute as well.

Defendant's motion to dismiss pursuant to Rule 12b(6), Fed. R. Civ. P. is thus granted.

So Ordered.

Dated: New York, N.Y.
April 27, 1976.

U.S.D.J.

Footnote

1. The Church has filed an affidavit of one of its officers stating that it only employs 63 people of whom 19 are black. It is thus not at all clear that the class which the plaintiff seeks to represent is sufficiently numerous or that her claim is sufficiently representative to make this suit appropriate for class action status pursuant to Fed. R. Civ. P. 23(a).

STATE OF NEW YORK)
: SS.
COUNTY OF NEW YORK)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 23 day of August 1977 deponent served the within Appendix upon:

Manning, Carey & Redmond, Esqs.

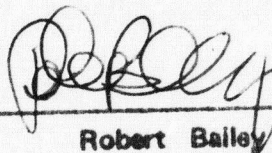
attorney(s) for

Appellees

in this action, at

122 East 42nd St., NYC

the address(es) designated by said attorney(s) for that purpose by depositing ~~a~~ true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.



Robert Bailey

Sworn to before me, this 23

day of August, 1977.



WILLIAM BAILEY

Notary Public, State of New York
No. 43-0132845

Qualified in Richmond County
Commission Expires March 30, 1977